

**IN THE  
COMMONWEALTH OF VIRGINIA  
REAL ESTATE BOARD**

Re: Keith L. Hartke  
Reston, VA 20191

File Number 2009-02077  
License Number 0225055737

**CONSENT ORDER**

Respondent Keith L. Hartke ("Hartke") recognizes and acknowledges being subject to and bound by the Regulations of the Real Estate Board ("Board"), as well as by all other applicable Virginia laws.

Hartke knowingly and voluntarily waives any proceedings for this matter under the Administrative Process Act, §§ 2.2-4019, 2.2-4020, and 2.2-4021 of the 1950 Code of Virginia, as amended.

**Board's Regulations provides:**

18 VAC 135-20-155. Grounds for disciplinary action.

The board has the power to fine any licensee, and to suspend or revoke any license issued under the provisions of Chapter 21 (§ 54.1-2100 et seq.) of Title 54.1 of the Code of Virginia, and this chapter where the licensee has been found to have violated or cooperated with others in violating any provision of Chapter 21 (§ 54.1-2100 et seq.) of Title 54.1 of the Code of Virginia, Chapter 1.3 (§ 6.1-2.19 et seq.) of Title 6.1 of the Code of Virginia or any regulation of the board. Any licensee failing to comply with the provisions of Chapter 21 (§ 54.1-2100 et seq.) of Title 54.1 of the Code of Virginia or the regulations of the Real Estate Board in performing any acts covered by §§ 54.1-2100 and 54.1-2101 of the Code of Virginia may be charged with improper dealings, regardless of whether those acts are in the licensee's personal capacity or in his capacity as a real estate licensee.

***Historical Notes:***

*Derived from Virginia Register Volume 19, Issue 12, eff. April 1, 2003.*

The Report of Findings, which contains the facts regarding the regulatory and/or statutory issues in this matter, is incorporated with the Consent Order.

By signing this Consent Order, Hartke acknowledges an understanding of the charges and admits to the violation(s) of the Counts as outlined in the Report of Findings. Hartke consents to the following term(s):

Count 1:	§ 54.1-2132.A.4 of the Code of Virginia	\$400.00
Count 2:	18 VAC 135-20-180.B.1.a	\$300.00
SUB-TOTAL (MONETARY PENALTIES)		\$700.00
BOARD COSTS		\$150.00
TOTAL		\$850.00

In addition, for violation of Count 1, Hartke agrees to complete at least four (4) classroom hours of Board-approved education pertaining to Escrow Management and/or other equivalent course approved by the Board and provide proof of attendance and successful completion within six (6) months of the effective date of this order. The course shall not be completed on-line.

It is acknowledged that satisfactory completion of the above-referenced education hours will not count towards any continuing education requirements, if applicable, for renewal of license.

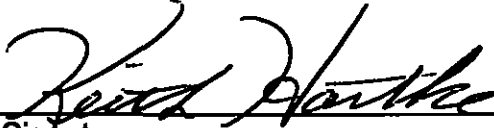
Any monetary penalties, costs, and/or sanctions are to be paid/performed within thirty days of the effective date of this consent order unless otherwise specifically noted above. Hartke acknowledges any monetary penalty and/or costs as a debt to the Commonwealth and agrees that in the event of a default, or the return of a check for insufficient funds, Hartke will be responsible for all reasonable administrative costs, collection fees, or attorney's fees incurred in the collection of whatever funds are due.

Hartke acknowledges that failure to pay any monetary penalty or costs and/or to comply with all terms of this Order within the specified time period, shall result in the automatic suspension of Hartke's license until such time as there is compliance with all terms of this Order. Keith L. Hartke understands the right to have this automatic suspension considered in an informal conference pursuant to the Administrative Process Act §§ 2.2-4019 and 2.2-4021 of the 1950 Code of Virginia, as amended, but knowingly and voluntarily waives any rights to the proceeding and hereby waives any further proceedings under the Administrative Process Act §§ 2.2-4020 and 2.2-4021 of the 1950 Code of Virginia, as amended.

The effective date of this Order shall be the date of execution by the Board.

**SEEN AND AGREED TO:**

The undersigned represents and affirms that he/she has the authority to legally bind Keith L. Hartke, to this Consent Order. The individual, by his/her signature below, acknowledges he/she read the Consent Order, understands it, and agrees that Keith L. Hartke, shall be bound by its terms and conditions.

 3/26/09  
Signature Date

Keith Hartke, Principal Broker  
Printed Name and Title

**SO ORDERED:**

Entered this 14<sup>th</sup> day of May, 2009.

Real Estate Board

BY:   
Jay W. DeBoer, Secretary

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**VIRGINIA DEPARTMENT OF PROFESSIONAL  
AND OCCUPATIONAL REGULATION  
COMPLIANCE & INVESTIGATIONS DIVISION  
9960 MAYLAND DRIVE, SUITE 400  
RICHMOND, VA 23233-1463**

**REPORT OF FINDINGS**

**BOARD:** Real Estate Board  
**DATE:** March 3, 2009

**FILE NUMBER:** 2009-02077  
**RESPONDENT:** Keith L. Hartke  
**LICENSE NUMBER:** 0225055737  
**EXPIRATION:** March 31, 2009

**SUBMITTED BY:** Investigator Jennifer Counts  
**APPROVED BY:** Supervisor Demetrios Melis

**COMMENTS:**

Companion file: 2009-02058.

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Keith L. Hartke ("Hartke") was at all times material to this matter a licensed principal broker in Virginia (No. 0225055737).

Based on the analysis and/or investigation of this matter, there is probable cause to believe the respondent has committed the following violation(s) of the Code of Virginia and/or Board's regulation(s):

**BACKGROUND:**

On December 4, 2008, the Compliance & Investigations Division of the Department of Professional and Occupational Regulation received a written complaint from William Webster ("Webster") regarding Hartke. (Exh. C-1)

On June 22, 2008, Webster, as buyer, and Kevin and Diana Owen ("the Owens"), as sellers, entered into a Regional Sales Contract for the purchase of 1166 Boathouse Court, Reston, Virginia ("the Boathouse Ct. contract"). National Realty, LLC ("National Realty"), as selling firm, and J. Wade Gilley, Jr. ("Gilley"), as selling agent, represented Webster. ERA Teachers, as listing firm, and Pete Blondin ("Blondin"), as listing agent, represented the Owens. (Exh. W-1)

The Boathouse Ct. contract called for a \$6,000.00 earnest money deposit ("EMD") to be held with National Realty. (Exh. W-1)

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1. Code of Virginia

§ 54.1-2132. Licensees engaged by buyers.

A. A licensee engaged by a buyer shall:

4. Exercise ordinary care; and

FACTS:

On or about June 16, 2008, Webster provided Gilley with two checks totaling \$6,000.00 for the EMD. (Exh. I-3 and C-1)

On June 23, 2008, the Boathouse Ct. contract was ratified. (Exh. W-1)

Gilley turned in the ratified Boathouse Ct. contract and associated EMD checks to National Realty's secretary within a day or two of ratification. (Exh. I-2 and I-3)

On August 4, 2008, settlement occurred. Line 201 of the settlement statement indicated that Webster paid a \$6,000.00 EMD. (Exh. C-3)

In late October 2008, after conducting an audit of National Realty's escrow account and bookkeeping records, Hartke discovered that the EMD checks for the Boathouse Ct. contract were not deposited. After a thorough search of office records, Hartke could not locate the physical checks and determined they had been misplaced. (Exh. I-2)

On November 21, 2008, following a previous verbal request, Hartke sent Webster a letter stating the two EMD checks had been misplaced and Hartke requested that Webster replace the \$6,000.00 EMD. (Exh. I-2 and C-4)

On December 22, 2008, Hartke deposited a \$6,000.00 replacement EMD check received by Webster into National Realty's escrow account. (Exh. R-2)

According to Hartke:

- National Realty uses Quickbooks and Back Office as book keeping systems. Quickbooks is linked to National Realty's escrow account. Back Office is not linked to Quickbooks or National Realty's escrow account.

- National Realty's former secretary, Andrea, indicated in Back Office that the EMD for the Boathouse Ct. contract was received and deposited. Andrea mistakenly did not indicate the same in Quickbooks. The EMD checks were not deposited into National Realty's escrow account. The deposit did not show up on Quickbooks or the bank statements, when the accounts were reconciled in the months proceeding contract ratification,
- Because Back Office is not linked to Quickbooks, Hartke did not discover the EMD was not deposited until conducting an audit of all bookkeeping systems in October 2008. (Exh. I-4)

Hartke's actions, as principal broker, of taking approximately four months to discover that an EMD check was not deposited into National Realty's escrow account is failing to exercise ordinary care.

## 2. Board Regulation

18 VAC 135-20-180. Maintenance and management of escrow accounts.

### B. Disbursement of funds from escrow accounts.

1. a. Purchase transactions. Upon the ratification of a contract, earnest money deposits and down payments received by the principal broker or supervising broker or his associates must be placed in an escrow account by the end of the fifth business banking day following ratification, unless otherwise agreed to in writing by the parties to the transaction, and shall remain in that account until the transaction has been consummated or terminated. In the event the transaction is not consummated (nonconsummation), the principal broker or supervising broker shall hold such funds in escrow until (i) all principals to the transaction have agreed in writing as to their disposition, or (ii) a court of competent jurisdiction orders such disbursement of the funds, or (iii) the broker can pay the funds to the principal to the transaction who is entitled to receive them in accordance with the clear and explicit terms of the contract which established the deposit. In the latter event, prior to disbursement, the broker shall give written notice to the principal to the transaction not to receive the deposit by either (i) hand delivery receipted for by the addressee, or (ii) by certified mail return receipt requested, with a copy to the other party, that this payment will be made unless a written protest from that principal to the transaction is received by the broker within 30 days of the hand delivery or mailing, as appropriate, of that notice. If the notice is sent within 90 days of the date of nonconsummation, the broker may send the notice by receiptable email or facsimile if such email address or facsimile information is set forth in the contract or otherwise provided by the recipient. In all events, the broker may send the notice to the notice address, if any, set forth in the contract. If the contract does not contain a notice address and the broker does not

have another address for the recipient of the notice, the broker may send it to the last known address of the recipient. No broker shall be required to make a determination as to the party entitled to receive the earnest money deposit. The broker shall not be deemed to violate any obligation to any client by virtue of making such a determination. A broker who has carried out the above procedure shall be construed to have fulfilled the requirements of this chapter.

***Historical Notes***

*Derived from VR585-01-1 §5.3, eff. July 15, 1987; amended, Virginia Register Volume 5, Issue 23, eff. October 1, 1989; Volume 7, Issue 14, eff. May 15, 1991; Volume 8, Issue 13, eff. May 15, 1992; Volume 11, Issue 18, eff. June 28, 1995; Volume 15, Issue 5, eff. January 1, 1999; Volume 19, Issue 12, eff. April 1, 2003; Volume 24, Issue 11, eff. April 1, 2008.*

**FACTS:**

In additions to the facts outlined in Count 1:

Hartke, as principal broker, failed to deposit the \$6,000.00 EMD within five business bank days following the ratification of Boathouse Ct. contract.